IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27-9-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1242 of 1998
C.M.P.Nos.13708 & 14132 of 1998

The Member Secretary,
CMDA, Egmore,
Chennai - 8. ... Appellant

Vs.

1. A. Vijayaraghavan

2. V. Radha

3. M/s.AVRN Hotel Pvt Ltd,
No.84-J, Samporna Avenue,
Vadapalani,
Chennai - 26.

4. The Commissioner,
Corporation of Chennai,
Chennai - 3. ... Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.6006 of 1998 dated 12.8.1998.presented this court under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the first respondent herein in his letter No.D/27790/96, dated 17.4.98 and quash the same and direct the first respondent to re-assess the market value of the property bearing Block No.12, Arumbakkam Village, T.S.No.8/9,10,11,16,17,20,21 and 22 at door No.12, Inner Ring Road, Arumbakkam, in accordance with law.5

For Appellant : Mr.P.S. Raman,
Addl. Advocate General,
for Mr.Hasan Mohamed Jinnah

For Respondents 1 to 3 : Mr.Zafarullah Khan
For 4th Respondent : Mr.Mohamed Ghouse

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed by the learned single Judge in W.P.No.6006 of 1998 dated 12.8.1998, allowing the writ petition filed by the respondents 1 to 3 herein.

2. The brief facts necessary for disposal of the writ appeal are as follows:

(a) The writ petitioners/Respondents 1 to 3 herein are joint owners of the land comprised in T.S.No.8/9, 10, 11, 16, 17, 20, 21 and 22 bearing Door No.12, Inner Ring Road, Arumbakkam, Chennai, measuring an extent of 4,350 Sq.Mtrs. The said land was classified as Primary Residential Use Zone. The respondents 1 to 3 applied for re-classification as Commercial Use Zone for the purpose of constructing a hotel consisting of 96 rooms with six car parking areas.

(b) The appellant herein sent a reply stating that the re-classification request will be considered subject to the respondents 1 to 3 executing an undertaking bond to meet the additional facilities required such as connection of water and sewerage as required by the Chennai Metro Water Supply and Sewerage Board and directed the respondents 1 to 3 to execute necessary affidavit. Pursuant to the said reply, an affidavit was also executed in March, 1996.

(c) The respondents 1 to 3 also applied to the CMDA for Planning Permission by application dated 4.3.1996. The re-classification of the land as Commercial Use Zone was considered by the Government and the area was re-classified as Mixed Residential Zone by Gazettee notification dated 25.9.1996, Part IV, Page 1026, published on 15.11.1996. Another application was submitted for granting planning permission. The said application was scrutinised by the Commissioner, Corporation of Chennai, who in turn stated that subject to handing over the open space reservation space and by collecting development charges, approval can be granted, pursuant to which the appellant directed the Commissioner to take over the open space reservation of an extent of 141 sq. ft. by way of registered Gift Deed and submit the said Gift Deed attested, for taking further action.

(d) The respondents 1 to 3 were directed to pay development charges of Rs.4,99,000/- as security deposit. The said condition was challenged in W.P.No.16078 of 1997 and this Court permitted the respondents 1 to 3 to furnish Bank Guarantee for the said sum by order dated 2.12.1997. The respondents 1 to 3 herein also filed W.P.No.16954 of 1997 and prayed for a direction to the appellant to process the planning permission application considering their undertaking that all costs and expenses of the work and materials for the water and sewerage connection will be met by the respondents 1 to 3. The appellant sent a reply on 25.7.1997 informing that the planning permission cannot be granted as Metro Water cannot

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provide both water supply and sewerage connection to multi-storied building, as no infrastructure was available. In the above referred writ petition, this court by order dated 12.11.1997 directed the appellant to grant no objection certificate within a particular period.

(e) The appellant by letter dated 11.12.1997 directed the respondents 1 to 3 to remit the development charges. Therefore on 17.12.1997 a bank guarantee for a sum of Rs.4,99,000/- was given along with three demand drafts worth Rs.1,500/-, Rs.45,000/- and Rs.1,76,000/- respectively. The appellant refused to receive the same by stating that unless and until the open space reservation is finalised and the open space is taken over by the Chennai Corporation, request for planning permission cannot be considered.

(f) The respondents 1 to 3 in the meanwhile submitted a revised plan and stated that the open space reservation as informed earlier could not be left as the financial condition has improved and undertakes to pay market value of the land in lieu of the open space reservation, pursuant to which the appellant obtained valuation letter from the Sub-Registrar, Kodambakkam, who in turn on 1.4.1998 informed the appellant that there is no guideline value available in his registers for the 100 feet road i.e., Jawaharlal Nehru Road, Arumbakkam, and the guideline value for the adjacent land in Puliyur village is fixed as Rs.2,330/- per sq.ft., and the same is the guideline value submitted by the Sub-Registrar, Kodambakkam, for the land in question. The appellant by letter dated 17.4.1998 called upon the respondents 1 to 3 to remit a sum of Rs.37,18,000/- towards open space reservation charges by fixing the market value at the rate of Rs.2,330/- sq.ft. The said order directing to remit a sum of Rs.37,18,000/- was challenged by the respondents 1 to 3 in W.P.No.6006 of 1998 with consequential direction to the appellant to assess the market value of the said property in accordance with law.

(g) The ground raised in the writ petition is that the market value of the land is different from the guideline value and the nearby lands were sold for lesser amount and in some cases higher stamp duty claimed were reduced by the Deputy Collector of Stamps under Section 47A of the Indian Stamps Act proceedings.

3. The respondents in the writ petition/appellant herein and the Commissioner of Chennai Corporation filed separate counter affidavits contending that the writ petitioners/respondents 1 to 3 herein having submitted that they are willing to pay the market value, the Sub-Registrar, Kodambakkam was requested to furnish the market value of the land, who in turn arrived at the market value of the land on the basis of the guideline value and fixed as Rs.2,330/- per sq.ft. and the land value given by the Sub-Registrar is the same value of the land situates 100 meters away from the land in question.

4. The learned single Judge following the decisions of the Supreme Court reported in (1994) 4 SCC 595 (Jawajee Nagnathan v. Revenue

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Divisional Officer); (1996) 2 SCC 62 (K.S.Shivadavamma v. Assistant Commissioner & Land Acquisition Officer); and (1996) 3 SCC 124 (M.V.K.Gundarao v. Revenue Divisional Officer), held that the market value for the acquired land in the land acquisition proceedings are to be fixed by the Collector and the valuation fixed under section 47A of the Indian Stamps Act, cannot be the market value and it will be a guideline value only. Applying the principles laid down in the said judgments, the learned single Judge allowed the writ petition filed by respondents 1 to 3 with a direction to fix the market value after giving notice and opportunity to the respondents 1 to 3 to place relevant materials and evidence.

5. The said order of the learned single Judge is challenged by the appellant/CMDA, contending that the market value is treated as guideline value in this case in terms of the Development Control Rules for Chennai Metropolitan Area, wherein it is stated that the market value is equivalent to valuation of the Registration Department only where it is not possible to provide open space due to physical constraints, while approving the planning permission. The said amount can be collected and the respondents 1 to 3 having applied under the said rule for planning permission, they are not justified in stating that the guideline value or the valuation of the Registration Department cannot be taken as market value.

6. The learned counsel for the respondents 1 to 3 reiterated the submissions made before the learned single Judge and also stated that even though several documents were registered by the Sub-Registrar, Kodambakkam, on the basis of the guideline value of the nearby area, namely Puliyur Village on appeal filed by the affected parties, the market value was considerably reduced and therefore the appellant cannot rely upon the said assessment of valuation of the Registration Department to arrive at the market value for the lands not reserved while the construction is carried on. The learned counsel for the respondents 1 to 3 also submitted that the Sub-Registrar, Kodambakkam by his letter dated 1.4.1998, fixed Rs.2,330/- per sq.ft. in Puliyur village without any basis.

7. In view of the above contentions, we have called upon the Additional Advocate General appearing for the appellant to file an affidavit clarifying under what basis a sum of Rs.2,330/- per sq.ft. was fixed as guideline value for the land in Puliyur Village. The learned Additional Advocate General filed an affidavit dated 17.9.2007 of the Sub-Registrar, Kodambakkam, with supporting documents to substantiate the valuation fixed.

8. We have considered the rival submissions made by the learned Additional Advocate General appearing for the appellant as well as the learned counsel appearing for the respective respondents.

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9. The point for consideration in this appeal is whether the course adopted by the appellant in fixing Rs.2,330/- per sq.ft. as market value for regularisation of the plan and the demand of Rs.37,18,000/- from the respondents 1 to 3 as developmental charges are justified ?

10. How the guideline value is treated as market value in this case is explained by the Sub-Registrar, Kodambakkam, through his affidavit dated 17.9.2007. It is stated in the affidavit that G.O.Ms.No.587 CT&RE Department, dated 26.5.1989, the Government issued guidelines for determination of the guideline value in different areas. The guidelines are fixed based on growth rate, higher value concept, spot enquiry and geographical conditions. Insofar as Puliyur village is concerned, the guideline value was fixed as Rs.2,100/- per sq.ft. from 1.4.1997 to 31.3.1998 as per G.O. dated 29.3.1997. The Arumbakkam Village, where the property of the respondents 1 to 3 is situate, is at the edge of the Inner Ring road and both Arumbakkam and Puliyur villages are located within a distance of one k.m. radius and when a particular road passes through two villages, same guideline value is fixed for the area covered by the said road in both the villages and in this case, Jawaharlal Nehru Road, which is the Inner Ring road passes through both Arumbakkam and Puliyur villages and therefore no specific guideline value was fixed for Arumbakkam village and the guideline value fixed for Puliyur village was treated as guideline value for Arumbakkam village also. In G.O. dated 1.4.1998, the guideline value of Puliyur village was fixed as Rs.2,330/- per sq.ft., which is also adopted to Arumbakkam Village. In the said affidavit it is further stated that it is not possible for the Registration Department to ascertain the true market value of a particular property in an area whenever sale is registered, as the true market value may change periodically and therefore the guideline value is taken to be the standard market value for a particular area for the purpose of stamp duty, registration fee and other charges, except when higher value concept applies. The Sub-Registrar also issued a letter dated 1.4.1998 fixing the revised guideline value of Rs.2,330/- per sq.ft. as market value for the said property.

11. In the light of the above affidavit filed by the Sub-Registrar, Kodambakkam, we could see that the guideline value is applied as market value for collecting charges from the respondents 1 to 3. The learned Additional Advocate General also produced a certificate signed by the Chairman and Member of the Value Fixation Committee dated 29.3.1997 with enclosure stating that for the Inner Ring Road area of Puliyur village, the guideline value was fixed as Rs.2,100/- previously, as the area was classified as Commercial Area which was subsequently re-classified as Commercial-cum-Residential area and the value was fixed as Rs.2,330/- per sq.ft. and insofar as the areas where it is not classified as Commercial-cum-residential area, the guideline value is fixed in the minimal. By pointing out the said document, the learned Additional Advocate General submitted that the guideline value was correctly fixed, which was taken as market value and the demand was made by the appellant on the above basis and the same is proper and reasonable.

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12. We are unable to accept the contention of the learned counsel for the respondents 1 to 3 that even though the adjacent lands were assessed with higher guideline value, on enquiry conducted by the Collector, the same was reduced in the enquiry conducted under section 47A of the Indian Stamps Act, as the Government or Registration Department has not reduced the guideline value based on individual reduction of market value by the Collector of Stamps. In the absence of any common order reducing the guideline value, respondents 1 to 3 are not justified in claiming that the guideline value fixed as Rs.2,330/- per sq.ft. is on the higher side.

13. The Development Control Rules of Chennai Metropolitan Area also states that open space reservation of lands for communal and recreation purposes shall be 10% of the area, excluding roads or in the alternative shall pay the market value of the equivalent land excluding first 3,000 sq.mtrs. as per the valuation of the Registration Department, if it is not possible to provide open space due to physical constraints. When the respondents 1 to 3 are taking advantage of the said provision, they are not justified in contending that they will not pay the guideline value as market value of the area in question.

14. The decisions cited by the learned counsel for the respondents 1 to 3 are in respect of enhancement of compensation at the instance of the land owners, whose lands were acquired by the Government for whom higher value concept is to be applied. Here in this case, the respondents 1 to 3 are deriving benefit by paying the guideline value which is a standard amount and therefore the said decisions are not applicable to the facts in this case, particularly in the light of the Development Control Rules for Chennai Metropolitan Area, framed under the Tamil Nadu Town and Country Planning Act, 1971 (T.N.Act No.35 of 1972).

15. In the light of the above findings, we are of the view that the order passed by the learned single Judge is liable to be set aside and accordingly the same is set aside. The writ appeal is allowed and W.P.No.6006 of 1998 filed by the respondents 1 to 3 herein is dismissed. There will be no order as to costs. Connected miscellaneous petitions are closed.

sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Commissioner,
   Corporation of Chennai
   Chennai.3.

2. The Member Secretary,
   Chennai Metropolitan Development
   Authority,
   No.8 Gandhi Irwin Road,
   Chennai.8

+ 1 cc to Mr.Mohamed Gouse Advocate SR.NO.60442
+ 1 cc to Govt.pleader SR.NO.60754

KK(CO)
RD 5.10.07

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